

Order  
concerning tobacco and tobacco goods  
(Order on Tobacco. OTab)

DRAFT

of ...

The Swiss Federal Council

having regard to Article 13, 2nd paragraph, 37 and 38 of the Federal Law of 9 October 1992<sup>1</sup>, concerning foodstuffs and normal objects

orders:

Section 1: Scope of application and requirements

First Article: Scope of application

The present order applies:

- a. to the manufacture, processing, storage, transport and delivery of tobacco, tobacco goods and articles containing tobacco substitutes;
- b. to the importing, transit and exporting of tobacco, tobacco goods and articles containing tobacco substitutes.

Art. 2: Principle

The products referred to in the First Article may only be delivered to the consumer if they comply with the provisions of the present order.

Art. 3: Definitions

- 1 Raw tobacco is understood as the leaves or parts of leaves and stems of the tobacco plant *Nicotina tabacum* L. and *Nicotina rustica* L., dried, fermented or treated in accordance with other normal industrial processes.
- 2 Homogenised or reconstituted tobacco is understood as leaves, products in the form of leaves or flakes manufactured from raw tobacco

1) RO ...

2021367666

- 2 -

finely ground then agglomerated or from actual manufacturing wastes treated in the same manner, in which the plant parts are no longer identifiable by microscopic examination. Homogenised tobacco must contain at least 70 percent mass of raw tobacco in the dry matter.

<sup>3</sup> Tobacco goods (tobacco products) are understood as products made up in all or in part of tobacco and intended to be smoked (cigars, cigarettes and similar products as well as cut tobacco and rolled tobacco), snuffed, sucked or chewed.

<sup>4</sup> Tobacco goods for oral use are understood as all tobacco products made up in all or in part of tobacco and intended for oral use, presented in the form of powder or fine particles or any combination of these forms, particularly those in sachet portions or porous sachets, or in any other form, to the exclusion of products intended to be smoked or chewed.

## Section 2: Tobacco goods (products)

### Art. 4: Substances used for the manufacture of tobacco goods

<sup>1</sup> For the manufacture of tobacco goods, in addition to raw tobacco, only the substances mentioned in the 2nd paragraph are accepted. Their quantity, in relation to the dry matter of the finished product, without possible wrappings in materials unrelated to tobacco, shall not exceed a mass of 25 per cent in cigarettes, cigars and similar articles for smokers and a mass of 30% in other tobacco products.

<sup>2</sup> The adding of the following substances is authorised in accordance with the rules of good manufacturing practices (the quantities indicated relate to the dry matter of the finished product, without possible wrappings in materials unrelated to tobacco):

- a. modifying and aromatising substances: aromatising substances accepted by the Federal Department of the Interior (DFI)<sup>1)</sup>, parts of harmless plants, *Folia liatris* (the total coumarine content shall not exceed a mass of 0.1%), sugars, honey, spices according to Article 370 of the Order of ...<sup>2)</sup> on foodstuffs (ODA) as well as sweeteners accepted by the DFI<sup>3)</sup> in a total quantity not exceeding a mass of 15% and, if it concerns cut or rolled tobacco, a mass of 20%;
- b. moistening agents: glycerine, sorbitol, 1.2-propylenglycol, 1.3-butylenglycol, triethylenglycol, orthophosphoric acid and alphasglycerophosphoric acid and its sodium, potassium, calcium magnesium compounds in a total quantity not exceeding a mass of 10%;
- c. whitening products of ashes and combustion accelerators: aluminium hydroxide, aluminium oxide, aluminium silicate, aluminium sulphate, alum, silicic acid, talc, magnesium oxide, carbonic, acetic, malic, citric, tartaric, lactic and formic acids

1) see Order on Additives of ... (RO ...)

2) RO ...

3) see Order on Additives of ... (RO ...)

2021367667

- 3 -

and their sodium, potassium, calcium and magnesium salts as well as ammonium, sodium, potassium, calcium and magnesium phosphates, ammonium chloride, ammonium sulphate; for cigars and cut tobacco, in addition, potassium nitrate;

d. preservative agents:

1. for cigarettes: benzoic acid as well as sodium, potassium and calcium salts and sorbic acid as well as its potassium and calcium salts up to 3 g. per kilogramme, ethyl or propyl ester of parahydroxybenzoic acid as well as its sodium salts up to 1 g. per kilogramme;
  2. for cigars, cut tobacco, tobacco in twists and reconstituted tobacco: benzoic acid as well as its sodium, potassium and calcium salts, sorbic acid and its potassium and calcium salts up to 3 g. per kilogramme, ethyl or propyl ester of parahydroxybenzoic acid and its sodium salts up to 5 g. per kilogramme, 2(thiazolyl-4-)-2 benzimidazole up to 1.5 g. per kilogramme as well as formic acid up to 1.5 g. per kilogramme;
  3. if a combination of these substances is used, the total of the quotients of the quantity added by the maximum content must not exceed 1;
- e. adhesives: gelling and thickening agents accepted by the DFI<sup>1)</sup> as well as shellac, collodion, cellulose, ethylcellulose, acethylcellulose, hydroxyethylcellulose, hydroxypropylguar and glyoxal; in addition, for covering glues: aqueous dispersions of polyvinyl acetate and copolymers of polyvinyl acetate.

<sup>3</sup> Upon a reasoned request, the Federal Office of Public Health (the Office) may authorise other substances. The authorisation must be limited in time and published in the Feuille Officielle Suisse du Commerce.

Art. 5: Processing of tobacco products

<sup>1</sup> Dry or wet powdering of cigars and similar articles intended to equalise them or to emphasise colour is accepted if one uses tobacco powder or small quantities of extract of blue wood, yellow wood or grains of Chintz (Yersa), juice of liquorice, sodium humate and extract of walnut stain. In addition, the colouring agents appearing in the positive lists of the Order of ...<sup>2)</sup> on additives and aromatising substances may be used to equalise colouring.

<sup>2</sup> Article 19 ODA is applicable by analogy to the processing of raw tobacco and tobacco products by means of ancillary products for the protection of stored plants.

Art. 6: Specific requirements applicable to cigarettes

The tar content of cigarettes must not exceed 15 mg.

- 1) See Order on Additives of ... (RO ...)
- 2) RO ...

2021367668

- 4 -

Art. 7: Prohibited tobacco products

Tobacco products intended for oral use cannot be imported or sold.

Section 3: LabellingArt. 8: Principle

<sup>1</sup> Each packet of tobacco products must carry at a very visible place, in easily readable and indelible letters, in at least one official language (letters a to d), the following information:

- a. the specific name referred to in Articles 21 and 23, 1st paragraph, letter a, ODA<sup>1)</sup>;
- b. The name or company name of the manufacturer or importer or return number (*numéro de revers*) allocated by the General Customs Directorate;
- c. The producing country, insofar that it does not result from the information under letter b;
- d. for products whose colouring has been equalised, the reference "colour-equalised";
- e. for cigarettes: their nicotine and tar content (Art. 9);
- f. general and specific warnings (Art. 10 to 12).

<sup>2</sup> All general and specific warnings must be printed in the three official languages. They may be supplemented by the reference "Warning from the Federal Office of Public Health".

<sup>3</sup> General and specific warnings on tobacco products other than cigarettes must, in each official language, cover at least 1 per cent of the total surface of the packet.

Art. 9: Indication of tar and nicotine contents

<sup>1</sup> Each cigarette packet must contain the tar and nicotine contents per cigarette. An indication of the tar content must appear in the three official languages. The contents must be affixed on a side section of the packet and cover at least 8% of this area (surface).

<sup>2</sup> Nicotine and tar contents shall be determined in accordance with Chapter 38 "Tobacco and tobacco goods" (1991 edition) of the Swiss Foodstuffs Manual<sup>2)</sup>.

Art. 10: General warnings

<sup>1</sup> Each packet of goods intended to be smoked must carry, at the time of its

<sup>1)</sup> RO ...

<sup>2)</sup> Not published in the Recueil officiel; it can be obtained from the Federal Central Office of Printed Matter and Equipment, 3003 Berne.

2021367669

- 5 -

delivery to the consumer, the following warning: "Smoking is seriously injurious to health".

2 Each packet of tobacco products which are not intended to be smoked must contain, at the time of its delivery to the consumer, the following warnings:

- a. "The consumption of tobacco is seriously injurious to health";
- b. "Causes cancer".

3

The warnings referred to in the 1st and 2nd paragraphs must be printed on the surface of the packet which is most visible and on a contrasting background.

Art. 11: Warnings on cigarette and tobacco packets for cigarettes to be rolled by the recipient.

1

Each cigarette and tobacco packet for cigarettes to be rolled by the recipient must contain, in addition to the warning referred to in Article 10, 1st paragraph, on the other main surface of the packet, alternately and with the same frequency of appearance, one of the following warnings:

- "Smoking causes cancer".
- "Smoking causes cardio-vascular illnesses".
- "Pregnant women: smoking is seriously injurious to your child's health".
- "Smoking is injurious to those around you".
- "Smoking causes cancer, chronic bronchitis and other pulmonary diseases".

2

On cigarette packets, the warnings referred to in the 1st paragraph and in Article 10, 1st paragraph, must cover at least 8 per cent of each of the main surfaces. They must not be affixed on the outside wrapping paper that is removed when the packet is opened. Nor must they be affixed at any place where they run the risk of being destroyed at the time of opening of the packet.

3

On cigarette packets the warning referred to in Article 10, 1st paragraph, may also be affixed in an official language on one of the two main surfaces of the packet and in the other two official languages on the other main surface. The texts must cover respectively 4 and 6 per cent of the surface. In this case the warnings referred to in Article 11, 1st paragraph, may be affixed on one of the narrow sections of the packet and must cover the equivalent of 8 per cent of a main surface.

Art. 12: Warnings on packets of other products for smokers

1

Each packet of cigars, cigarillos, pipe tobacco and similar products intended to be smoked must contain, in addition to the warning referred to in Article 10, 1st paragraph, one of the following two warnings, alternately and with the same frequency of appearance:

- "Smoking causes cancer".
- "Smoking causes fatal diseases".
- "Smoking is injurious to those around you".

2021367670

- 6 -

- "Smoking causes cardio-vascular illnesses".

2 These warnings must be printed at a very visible place on the packet and on a contrasting background.

Art. 13: Disclosure of particular properties

1 Tobacco products may be described as "pure", "natural", "of natural colour" or in a similar manner if, for their manufacture, one has not used other substances than gelling and thickening agents accepted as adhesive (Art. 5).

2 Tobacco products may be described as "low in nicotine" which contain the following maximum amounts of nicotine in the dry substance:

- a. cigarettes and tobacco to be cut: 0.5% of the total mass;
- b. cigars, tobacco to be chewed, twists and taken as snuff: 0.8% total mass.

3 Tobacco products described as "without nicotine" must not contain more than 0.1% mass of nicotine in the dry substance.

4 Besides the descriptions "low in nicotine" and "without nicotine", any other information suggesting a reduction of effects injurious to health is forbidden. There are accepted, however:

- a. the expressions "low" and "slight" as well as their derivatives if they are used in relation to the description of the aroma and taste;
- b. allusions to treatments directed to reducing the content of certain components of tobacco products or tobacco smoke, provided that only the nature of these processes and their purpose are mentioned.

Section 4: Protection against deception, advertising

Art. 14: Protection against deception

1 Names, information and illustrations used in advertisements or publicity for tobacco and tobacco products must correspond to the facts and exclude any possibility of deception as to the nature, origin, manufacture, composition, method of production or effects.

2 Any publicity allusion having any relation whatsoever to health is forbidden for tobacco and tobacco products.

Art. 15: Advertising for tobacco products

Any advertising for tobacco products is forbidden which is clearly addressed to young people under the age of 18 and directed to encourage them to use

2021367671

- 7 -

tobacco, in particular advertising:

- a. in places frequented mainly by minors;
- b. in newspapers, magazines or other publications intended mainly for minors;
- c. on school equipment (briefcases for school children, cases, pens, etc.);
- d. on advertising media such as T-shirts, helmets, pennants, balls for use in the water, etc., given to minors;
- e. on toys;
- f. in cinemas where minors have access to afternoon showings;
- g. through the free distribution of tobacco products to minors;
- h. by leading personalities of the world of sport and variety shows;
- i. through the presentation of scenes openly suggesting that the consumption of tobacco products facilitates success particularly on the athletic, social or sexual level.

#### Section 5: Tobacco substitutes

##### Art. 16: Mandatory authorisation

- Subject to pre-authorisation b/f mktg

- 1 Articles intended to be smoked which do not contain tobacco as well as tobacco products to which tobacco substitutes are added must be the object of an authorisation issued by the Office.
- 2 In its assessment, the Office will take into consideration the following elements:
  - a. composition;
  - b. intended use;
  - c. labelling.
- 3 The Office fixes the specific name at the same time that it issues the authorisation.
- 4 Authorisations must be limited in time. The Office periodically publishes a list of authorised products in the Feuille Officielle Suisse du Commerce.

#### Section 6: Final provisions

##### Art. 17: Transitional provisions

Tobacco products may be manufactured, packaged, labelled or imported in accordance with the former provisions until .... (1 year after entry into force). They may be delivered to consumers up to ... (2 years after entry into force).

2021367672

- 8 -

Art. 18: Entry into force

The present Order enters into force on .... 1994.

Date

In the name of the Swiss Federal Council:

The President of the Confederation

The Chancellor of the Confederation

2021367673



## EXPLANATORY REPORT

### Order concerning Tobacco and Tobacco Goods (OTab)

#### 1. General Matters

The new Law on Foodstuffs (NLDA) defines in its Article 3 foodstuffs as nourishing products. Alcoholic drinks as well as tobacco and other goods for smokers are treated as foodstuffs. Now, a large part of the general provisions on nourishing products are not applicable to tobacco and other products intended for smokers. Also, there are many persons who do not understand the reasons why tobacco and these other products are regulated jointly with nourishing (nutritious) products in the Order on Foodstuffs (ODA; RS 817.02). The provisions on tobacco and products for smokers have therefore been extracted from the Order on Foodstuffs and henceforth are the subject of a separate Order.

Benefit has been made of this new Order to introduce on the same occasion directives into Swiss legislation that form part of the Community patrimony. This involves Council Directive No. 89/622 of 13 November 1989<sup>1)</sup> concerning the alignment of legislative, regulatory and administrative provisions of member States concerning the labelling of tobacco products as well as Council Directive No. 90/239 of 17 May 1990<sup>2)</sup> concerning the alignment of the legislative, regulatory and administrative provisions of member States concerning the maximum tar content of cigarettes. Consideration has also been taken of Council Directive No. 92/41 of 15 May 1992<sup>3)</sup> relating to amendment of Directive 89/622.

#### 2. Commentary on the different provisions

##### First Article: Scope of application

The scope of application does not include only products containing tobacco but also tobacco substitutes, for example sold in the form of products without nicotine intended to be smoked (Art.

1) JO No. L 359 of 8 December 1989, p. 1.

2) JO No. L 137 of 30 May 1990, p. 36.

3) JO No. L 158 of 11 June 1992.

2021367674

- 2 -

16).

**Article 2: Principle**

Article 2 orders that only products in accordance with the provisions of the new Order (1st paragraph) can be delivered to the consumer. The requirements fixed by the Order for tobacco products are not exhaustive, however, particularly with regard to inscriptions on packaging. The provisions of the Federal Law of 21 March 1969 on the taxation of tobacco (RS 641.31) and those of the Federal Law of 9 June 1977 on measurements (RS 941.20) are reserved.

**Article 3: Definitions**

Paragraphs 1 and 2 (raw tobacco, homogenised or reconstituted tobacco) correspond to the former Article 420 ODA. The 3rd paragraph is taken from EC Directive No. 89/622 and the 4th paragraph is taken over from Article 2, 4th paragraph of this Directive. Thus it is the first time that tobacco products for oral use have been defined. These tobacco products to be sucked are known in Switzerland under the names of "snuf" or "catch".

**Articles 4 and 5: Substances used for the manufacture and processing of tobacco products**

These products contain the revised provisions of Article 420a ODA. They were tidied up within a small working group which had co-opted representatives of the industry. They were then submitted for consultation amongst the circles concerned. Modifying substances such as honey, sugars, extract of liquorice may henceforth be added to tobacco in larger proportions than in the past. The maximum content in substances of this type which is 6% of the total mass was increased to 15% total mass. Substances which are no longer used or which are dangerous on the toxicological level such as boric acid, diethyleneglycol or sulfamic acid (acide sulfamique) are no longer authorised. Some additives are newly authorised, for example sweeteners such as aspartame, acesulpham-K and thaumatococine or sorbate and benzoate.

**Article 6: Specific requirements applicable to cigarettes**

Limitation of the tar content of cigarettes corresponds to that fixed by Directive No. 90/239.

**Article 7: Prohibited tobacco products**

The prohibition against the selling or importing of tobacco products intended for oral use is in accordance with the EC regulations and was also asked for by certain Parliamentary interventions.

2021367675

- 3 -

**Article 8: Labelling (principles)**

This article contains the requirements concerning labelling applicable to all tobacco products. The general information may be contained on the packing in a single official language. On the other hand, the warning must be recorded in the three official languages on the packing of tobacco products.

**Article 9: Indication of tar and nicotine contents**

The determination and indication of the tar and nicotine contents of cigarettes correspond to Directive No. 90/239 and were already the subject of Article 420c, 2nd paragraph ODA. To that are henceforth added the requirements of the EC relating to the minimum surface reserved for such purpose on packing.

**Article 10: General warnings**

This article contains the warning requirements imposed by the EC Directives as well as provisions on the manner of printing them. The Article applies to the packing of all tobacco products.

**Article 11: Warnings on packets of cigarettes and tobacco for cigarettes to be rolled by the recipient**

The specific warning requirements on packets of cigarettes come from Directive No. 89/622. The variant formulated in the 3rd paragraph takes account of graphic problems resulting from the fact that the warnings must be printed in three languages in Switzerland. The parties concerned have given their assent to the wording of this provision.

Tobacco for cigarettes to be rolled by the recipient is treated in the same manner as cigarettes read for use with regard to requirements concerning warnings.

**Article 12: Warnings on packets of other products for smokers**

The provisions of this Article correspond to EC Directive No. 89/622. They regulate warning requirements applicable to all other products for smokers.

**Article 13: Disclosure of particular properties**

Article 13 has the same content as the old Article 420b ODA.

2021367676

- 4 -

**Article 14: Protection against deception**

The provisions of this article are inspired by Articles 15 and 19 ODA and have been reformulated to be adapted to tobacco and tobacco products.

**Article 15: Advertising**

Article 60 LDA gives the Federal Council jurisdiction for restricting, until particular provisions on the subject are issued, advertising for alcoholic drinks and tobacco aimed particularly at young people. The initiative directed to reducing problems connected with tobacco having been rejected by the people on 28 November 1993, the Federal Council continues to have the sole jurisdiction to draw up requirements aimed at protecting young people. This is why the restrictions provided for by Article 15 are based on the present law and, to the extent that they concern the protection of young people, on the agreement relating to restrictions that the tobacco industry has imposed on itself concerning advertising. This agreement was entered into on 24 August 1992 between the Association of Swiss Cigarette Manufacturers and the Swiss Commission for Fair Advertising.

The obsolete prohibition against the free sale of cigarettes to minors was abandoned. This prohibition was the subject of Article 420d ODA. Today the majority of minors have sufficient pocket money to buy a complete packet. As the prohibition had become a dead letter in practice, there was no longer any reason to maintain it.

**Article 16: Tobacco substitutes**

The content of Article 420e ODA was taken over but reformulated. This provision corresponds to the analogous article governing new products in the area of foodstuffs (Art. 3, paragraphs 2 to 4 of the new Order concerning Foodstuffs).

**Article 17: Transitional provisions**

The transitional provisions authorise still for a certain period the use of old packets and grant a period of time to prepare a new printing of packages. It involves the usual deadlines granted to industry in cases of this type (1st paragraph).

**Article 18: Entry into force**

It is provided to have the order concerning

2021367677

22/02 '94 12:13

081 688 8888

ALPNET INTERLING --- PM EEC LEGAL LSN

014

- 5 -

tobacco and tobacco products enter into force at the same time as  
the new Law on Foodstuffs, that is, around the middle of 1994.

2021367678

014

PM EEC LEGAL LSN

21 617 44 09

0+41

15:43

22/02 '94